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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/754,812	01/09/2004	Peter S. Schulte	29020/316A	1565
34431	7590	06/23/2006	EXAMINER	
HANLEY, FLIGHT & ZIMMERMAN, LLC 20 N. WACKER DRIVE SUITE 4220 CHICAGO, IL 60606			STRIMBU, GREGORY J	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/754,812	SCHULTE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gregory J. Strimbu	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 5,13 and 23-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-12 and 14-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/11/05</u> . | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

Applicant's election with traverse of species I in the reply filed on April 17, 2006 is acknowledged. The traversal is on the ground(s) that the examiner has failed to provide any reasoning as to why each of the alleged species is independent or distinct, the examiner has failed to allege that it would be a serious burden on the examiner to consider all of the different species, and maintaining the restriction requirement is a serious burden on the applicant. This is not found persuasive because the examiner has provided reasoning as to why each of the species is independent and distinct. See page 2 of the Office action mailed March 17, 2006. Because the applicant has failed to address the examiner's reasoning why each of the species is patentably distinct, the applicant's comments in the reply of April 17, 2006 are not persuasive. Additionally, withdrawal of the restriction requirement would create a serious burden on the examiner because additional classes/subclasses would need to be searched in order to properly examine all of the patentably distinct inventions. Finally, maintaining the restriction requirement does not necessarily create an additional burden on the applicant. If a generic claim is found to be allowable, all of the applicant's patentably distinct inventions would be included in one patent. The requirement is still deemed proper and is therefore made FINAL.

Claims 5, 13 and 23-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 17, 2006.

***Information Disclosure Statement***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

***Specification***

The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

The disclosure is objected to because of the following informalities: on line 32 of page 2, it appears that "'667'" should be changed to --'637--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

Claims 1-4, 6-12 and 14-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "a wall" on line 2 of claim 1 render the claims indefinite because it is unclear if the wall comprises a part of the surrounding structure set forth

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above or if the wall is in addition to the surrounding structure. Recitations such as "a door panel" on line 4 of claim 1 render the claims indefinite because it is unclear if the door panel is part of the door set forth above or if the door panel is in addition to the door. Recitations such as "the track" on line 12 of claim 1 render the claims indefinite because it is unclear to which one of the plurality of tracks set forth above the applicant is referring. Recitations such as "forces" on line 13 of claim 1 render the claims indefinite because it is unclear what forces the resilient connection into a yield mode.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6-12, 14-19, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Linstadt. Linstadt discloses a door 3 being movable relative to surrounding structure 1 for at least partially covering a doorway 2 of a wall, comprising: an upper track 5, a door panel 3 suspended from the upper track and being movable horizontally across the doorway along a predetermined normal path; a lower track 8 disposed below the upper track and being attachable to one of the door panel and the surrounding structure; a panel retention system 12 adapted to be carried by one of the door panel and the surrounding structure, wherein the panel retention system is movably connected to the lower track such that the panel retention system and the

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lower track provide relative traveling motion therebetween to help guide the door panel along the predetermined normal path; and a resilient connection 14 provided by at least one of the track and the panel retention system, wherein the resilient connection has a yield point that when exceeded forces the resilient connection into a yield mode where the door panel moves beyond the predetermined normal path, and afterwards the resilient connection automatically returns to a normal mode where the door panel is back within the predetermined normal path, a spring 14 disposed within a tube 15, the spring is a tension spring because if a tension force were applied to the spring, it would resist said force, a pliable elongate member 12 coupling the spring 14 to the track 8, the elongate member is adjustable via the pin 16, a track follower 13.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Linstadt as applied to claims 1, 2, 4, 6-12, 14-19, 21 and 22 above. Linstadt is silent concerning the track being carried by the panel.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the track 3 carried by the panel 3, since it has been

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held that mere reversal of the essential working parts of a device involves no more than routine skill in the art. *In re Einstein*, 8 USPQ 167.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Delgado et al., Elmore, Dimmitt et al., Kern et al. 763 and '487, Ngian et al., Kvasnes, O'Bar, and Brosenius are cited for disclosing a sliding panel is movable generally in a direction normal to its usual direction of travel.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634  
June 20, 2006